

Marine Environmental Pollution And Its Impacts On The Fulfillment Of Indigenous Peoples' Right To A Healthy Environment

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ABSTRACT

This research aims to analyze and understand marine environmental pollution and its impact on the fulfillment of indigenous peoples' right to a healthy environment. The study employs an empirical juridical research type, utilizing literature review based on theory, doctrine, and legal norms related to the discussed issues. This research is prescriptive, analytical, and explanatory, addressing problems based on legal provisions, norms, and theories, then analyzing them qualitatively. Ultimately, it will draw conclusions to answer the discussed problems.

Key Words: Marine Environment, Pollution, Fulfillment of Rights, Indigenous Peoples.

INTRODUCTION

Human Rights (HAM) are universal rights possessed by humans solely due to their status as humans. This view indirectly indicates that characteristics such as race, gender, religion, social status, and citizenship are irrelevant to whether a person has human rights. This implies that these rights can be applied worldwide. One distinctive feature of current human rights is that they are international rights. Compliance with such rights has been regarded as legitimate international action (James W. Nickel, 2000).

The division of human rights generations according to Karel Vasak, a French legal expert inspired by the French Revolution, is divided into three generations: The first generation, namely civil and political rights (liberty); The second generation, namely economic, social, and cultural rights (egalite); The third generation, namely solidarity rights (fraternite) (Weston, 2008).

The first generation emerged in the Universal Declaration of Human Rights (UDHR) in 1948, the second generation emerged with the birth of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1966, and the third generation, emphasizing human rights in development (the rights to

development), particularly for third-world or developing countries in 1980 (Zeffry Alkatri, 2010).

Thus, it is gradually accepted that the state has an obligation to respect, fulfill, and protect all human rights. The obligation to fulfill human rights refers to the state's duty to take the necessary legislative, administrative, and practical actions to ensure that the rights in question are as fully realized as possible, without adverse impacts on society.

The emergence of the concept of fulfilling human rights in 1974 by Rene Cassin in its development also included the right to a healthful and decent environment. This was motivated by environmental problems (specifically pollution) that significantly harm people's livelihoods.

Thus, implicitly, the fulfillment of human rights and the function of the environment have been stated in human rights instruments, such as the International Covenant on Economic, Social, and Cultural Rights (ICESCR), although explicit recognition of the right to a healthy environment began with the Rio Declaration as a non-binding principle.

National provisions regulating the protection and fulfillment of human rights in Indonesia are contained in Law Number 39 of 1999 concerning Human Rights. Generally, human rights are inherent rights of every human being from birth, valid for life, and cannot be violated by anyone.

According to Article 1 of Law No. 39 of 1999 concerning Human Rights: "Human Rights are a set of rights inherent in the essence and existence of humans as God's creatures and are His blessings that must be respected, upheld, and protected by the state, law, government, and everyone for the honor and protection of human dignity."

According to Article 65 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management: "Everyone has the right to a healthy environment as part of Human Rights." From these rules, the relationship between the environment and human rights contains the understanding that a good and healthy environment is a human right for everyone that must and should be fulfilled and protected. The state, represented by the local government, both in the regions and at the center, should implement these rights in the form of environmentally friendly policies so that positive impacts can be felt and enjoyed by indigenous peoples.

Approximately 350 million people worldwide are indigenous peoples (Eddie Riyadi, 2006). Similarly, the United Nations Development Programme reports that around 370 million people are members of indigenous legal communities living in more than 70 countries worldwide, representing 5% of the world's population. Meanwhile, 80% of the world's biodiversity thrives in 22% of the planet's area, home to indigenous legal communities. Researchers state that the

richness of their biodiversity is threatened, which in turn will threaten the long-standing and hereditary relationship between indigenous legal communities and their homeland, as well as their health and welfare (United Nations, 2011). The study employs qualitative methods with data collection techniques through interviews, observations, and documentation. Once all data is collected, it will be analyzed using content analysis techniques.

If we examine it closely, there are numerous international legal instruments that legitimize the existence of indigenous legal communities. Among them is ILO Convention No. 157 of 1957 concerning the protection and integration of indigenous and tribal and semi-tribal peoples in independent countries. This was followed by ILO Convention No. 169 of 1989. The main concept presented in ILO Convention No. 169 of 1989 concerns the preservation and participation of indigenous peoples in policies and decisions affecting their survival and existence. Important points in this convention include the recognition of indigenous legal communities as subjects of protected rights and the acknowledgment of the collective rights of indigenous legal communities.

The Indonesian government is reluctant to ratify ILO Convention No. 169 of 1989, citing potentially very complex legal implications in Indonesia and differing concepts of indigenous peoples compared to the concept in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). However, Indonesia has ratified various international legal provisions, including the ICESCR 1966 with Law No. 11 of 2005, UDHR with Law No. 39 of 1999, ICCPR with Law No. 12 of 2005. There are many more international conventions ratified concerning the rights of indigenous legal communities. Additionally, national laws recognize and protect the rights of indigenous legal communities, such as Law No. 5 of 1960 concerning Agrarian Principles (UUPA), Law No. 4 of 2009, which was updated with Law No. 3 of 2020 on Mineral and Coal, Law No. 41 of 1999 on Forestry.

Various international and national legal documents mentioned above illustrate the recognition and protection of human rights for minorities, specifically indigenous legal communities in the archipelago. However, these minorities are severely hindered in enjoying their rights in their own land. They are neglected, marginalized, uprooted from their cultural roots, and even from the land that sustains them for generations. The overall legal provisions established by the state are essentially oriented only to the state, neglecting the existence of indigenous peoples for and in the interest of the state.

As seen in preliminary research findings, pollution occurs in Siliha Hamlet, Maneo Village, Kobi District, Central Maluku Regency, Masohi, due to toxic liquid waste from palm oil processing. The waste is discharged on the shores of Siliha Hamlet. This toxic liquid impacts marine biota and human life.

According to the Kalesang Institute, pollution has occurred. The water samples from the Siliha River, suspected of being contaminated by waste from the Nusa Ina Palm Oil Factory, were taken and tested at the Maluku Health Laboratory. The test results indicated that the water contained hazardous and toxic substances above the permissible limits.

RESEARCH METHODS

The research method used in this study is empirical research by collecting data from various competent parties. However, it still uses literature studies based on theory, doctrine, and legal norms related to the discussed issues. Primary data is obtained from the community, district government, indigenous community leaders, and other relevant institutions. This data can be obtained through interviews with competent parties on the issue. This research is prescriptive, analytical, and explanatory, relying on collected data, sorting it based on relevance, and analyzing it qualitatively (Soekanto, 2006).

RESULTS AND DISCUSSION

Chronology of Environmental Pollution Cases Affecting Indigenous Peoples' Environment

According to Article 87 of Law No. 32 of 2009 concerning Environmental Protection and Management, "Every person in charge of a business and/or activity that commits an unlawful act in the form of pollution and/or environmental destruction that causes harm to other people or the environment is obliged to pay compensation and/or take certain actions." According to Article 1365 of the Civil Code, "Every unlawful act that causes harm to another person obliges the person at fault to compensate for the damage."

This research focuses on pollution issues in Siliha Hamlet, Maneo Village, North Seram Kobi District, Central Maluku Regency. The river water in Siliha Hamlet foamed white and blackish brown, many fish died, and people experienced itching and stomach pain after using the water and eating fish on February 17, 2021. This event made people unwilling to fish on the coast.

Following the incident, the community authorized the Kalesang Environmental Institute (LKLH), an environmental organization in Maluku, to report it to the Maluku Regional Police. LKLH took water samples from the Siliha River to be tested in the laboratory. The lab test results for the waste sample from PT Nusa Ina were submitted on March 23, 2021, and released by the Health Laboratory on March 12, 2021. The lab results showed that the water contained hazardous and toxic substances (B3) above the permissible limits, including chloride, free chlorine, cadmium. The Regional People's Representative Council (DPRD) also tested the water in the laboratory, confirming that the Siliha River was polluted with hazardous substances.

Based on the outlined case, the issuance of environmental permits must consider the principles contained in Article 2 of Law No. 32 of 2009, namely:

- a. Principle of State Responsibility: The state guarantees that the utilization of natural resources will provide the greatest benefit for the people's welfare and quality of life, both for the present and future generations. The state guarantees the right of citizens to a good and healthy environment. The state prevents the use of natural resources that causes environmental pollution or damage.

When related to this case, the principle of State responsibility explains the obligations of local governments, including supervision and law enforcement, conducted for the preservation of environmental functions. An interview with Mr. Moh Sukri from Commission III of the Regional People's Representative Council (DPRD) revealed that after receiving complaints from the community, Commission III visited Nusa Ina Company, took samples to be analyzed in the laboratory. The laboratory results indicated the presence of hazardous and toxic waste (B3).

- b. Principle of sustainability and continuity: Everyone bears the obligation and responsibility towards future generations and their peers within one generation by making efforts to preserve the ecosystem's carrying capacity and improve the quality of the living environment. Regarding this case, the principle of sustainability and continuity explains that in issuing policies, the government must consider the preservation and sustainability of the surrounding environment.
- c. Principle of precaution: The uncertainty about the impact of a business and/or activity due to limited scientific and technological knowledge is not a reason to delay steps to minimize or avoid threats to pollution and/or environmental damage. The government must prioritize this principle to avoid threats to pollution and/or environmental damage. The Ministry of Environment must be cautious in granting permits.
- d. Principle of participation: Every community member is encouraged to play an active role in decision-making processes and the implementation of environmental protection and management, either directly or indirectly. The principle of participation relates to the role of the community as outlined in Law No. 32 of 2009 Article 70, which states, "The community has equal and broad rights and opportunities to participate actively in environmental protection and management." The role of the community, especially indigenous people, is significant because when an activity or business is established, the impacts will be felt by the indigenous people.

Legal Implications for Indigenous Peoples' Rights Due to Environmental Pollution

Indonesian law clearly formulates and accommodates human rights, as regulated from Articles 27 to 34 of the 1945 Constitution. The regulation of human rights in the constitution is a recognition established in the highest source of law for a legal state like Indonesia (Likadja, J.A.C, 2015). The right to the environment is a constitutional obligation of the state. This is formulated in Article 28I paragraph (4), which states, "The protection, advancement, enforcement, and fulfillment of human rights are the responsibilities of the state, especially the government." This text in the constitution aims to emphasize the purpose of establishing the Republic of Indonesia as outlined in the fourth paragraph of the Preamble of the 1945 Constitution, namely to protect all Indonesians, promote public welfare, educate the nation's life, and participate in maintaining world order based on independence, eternal peace, and social justice (J.A. Y. Wattimena, 2021).

The environment as a fundamental right and a human right is continuously debated due to many related issues. Adopting the opinion of Munadjat Danusaputro, the environment includes all objects, forces, and conditions, including humans and their behavior, found in the space where humans exist and affect the survival and well-being of humans and other living beings (Munadjad, 2015).

Humans, along with plants, animals, and microorganisms, occupy a specific space. Besides living beings, there are also non-living objects in that space, such as air consisting of various gases, water in vapor, liquid, and solid forms, soil, and rocks. The space occupied by living beings and non-living objects is called the environment (Otto Soemarwoto, 1999).

Environmental issues are closely related to ecological issues. The term ecology, etymologically derived from the Greek words "oikos" meaning home or place to live, and "logos" meaning science. Thus, ecology literally means the study of living beings in their homes or can also be interpreted as the science of the household of living beings. According to Odum, ecology is defined as the study of the relationships between organisms or groups of organisms and their environment, or the science of the reciprocal relationships between living organisms and their environment (Eugene P. Odum, 1993).

Therefore, environmental issues are essentially ecological issues. The core of environmental problems is the reciprocal relationship between living beings and their environment. If the reciprocal relationship between living beings and their environment runs regularly and forms an interdependent system, an ecological system called an ecosystem is established. Because the environment consists of living and non-living components interacting regularly as a unit and influencing each other (interdependence).

Environmental issues are essentially ecological problems. Regarding indigenous peoples, there is de facto and de jure recognition. However, in reality, indigenous people's rights are often marginalized due to various interests. Indigenous people play a crucial role in environmental management.

An interview with the village secretary, Mr. Joel Boeratman, revealed that when there is an activity or business planned in an area, it is not coordinated with village officials. Even in the case of Nusa Ina Company, which operates in palm oil, local youth were not involved in recruitment, despite some locals having the necessary qualifications and degrees.

When the sea water turned brown and affected marine life, causing skin irritation for people who bathed in it, the community realized pollution had occurred. As a result, the village officials agreed to file a complaint with the Environmental Office in Masohi.

The Environmental Office team visited PT Nusa Ina, directly inspected the palm oil processing activities, and found an increase in capacity that caused leakage in the wastewater treatment plant. Therefore, administrative sanctions from the Ministry of Environment were imposed due to capacity changes, both in tanks and other supporting aspects that needed improvement.

The institutional management of the environment is implied in the provisions of Article 63 and Article 64 of the Law on Environmental Protection and Management (UUPPLH 23 of 2009), which states that the authority of the government as referred to in Article 63 paragraph (1) is carried out and/or coordinated by the minister (Muhammad Akid, 2014). The minister referred to is the Minister of the Environment. Thus, implicitly, UUPPLH 2009 also recognizes the existence of various ministries or relevant non-ministerial government agencies. In addition, to perform the duties and authorities of the regions as stipulated in Article 63 paragraphs (2) and (3) of UUPPLH, environmental institutions also exist at each level of local government. The government, as the personification of the state, in fulfilling its obligations in environmental administration, is bound by the principles of human rights, namely to respect, protect, and fulfill (to respect, to protect, and to fulfill) the implementation of human rights to the environment for indigenous peoples. The state's obligation in applying these three steps is an interrelated sequence, borrowing the concept from Hernandi Affandi, who states that these three steps are a process from upstream to downstream. This means that the first step will impact the second step, and the second step will influence the third step. Therefore, the third step must be preceded by the second step, and the second step must be preceded by the first step. Thus, the final step will be the culmination of the first and second steps (Affandi, Nd).

In various international legal instruments, the state's obligation to implement human rights is imperative, whether immediately or gradually. For human rights to the environment, which is part of economic, social, and cultural rights, fulfillment is gradual but continuous. This is demonstrated through the above steps, such as the right to fulfillment evidenced by the state's obligation to establish regulations to manage and address environmental rights.

The government's obligation to implement human rights to the environment tends to be discriminatory towards indigenous peoples. This is reflected in various actions taken against indigenous people's lands, territories, and natural resources, which are seized and converted for investor interests. Thus, the government has violated the environmental human rights of indigenous peoples. In many cases, the exploitation of natural resources is often related to the accumulation of foreign capital (Steny, 2009).

Law No. 39 of 1999 on Human Rights asserts that: (1) In the context of enforcing human rights, the differences and needs of indigenous peoples must be considered and protected by law, society, and the government (J. Leatemia, 2015). In this case, customary rights that are still valid and highly regarded within the unity of indigenous legal communities must be respected and protected in the context of protecting and enforcing human rights within the community, taking into account existing laws and regulations. (2) The cultural identity of indigenous legal communities, including land rights, must be protected in line with the times. In the context of enforcing human rights, the national cultural identity of indigenous legal communities and customary rights that are still firmly upheld by local indigenous legal communities must be respected and protected as long as they do not conflict with the principles of a legal state based on justice and public welfare (H.R. Ridwan, 2002).

Law No. 1 of 2014 on the Management of Coastal Areas and Small Islands states that the government recognizes, respects, and protects the rights of indigenous peoples, traditional communities, and local wisdom over coastal areas and small islands that have been utilized for generations (Article 61 paragraph 1). Recognition of the rights of indigenous peoples, traditional communities, and local wisdom serves as a reference in the sustainable management of coastal areas and small islands. Indigenous peoples, in this case, are coastal communities who have traditionally resided in specific geographical areas due to ancestral ties, a strong relationship with coastal and small island resources, and a value system that determines economic, political, social, and legal institutions.

The recognition of indigenous legal communities in the 1945 Constitution, Law No. 39 of 1999, and Law No. 1 of 2014 should result in environmental rights for indigenous peoples being attributed authority within certain limits that must be established by legislation. Theoretically, authority derived from legislation is

obtained through three methods: attribution, delegation, and mandate. Attribution involves the granting of new government authority by a provision in legislation. Delegation involves the transfer of existing authority by a state administrative body or office. Thus, delegation always follows the attribution of authority. A mandate occurs when a government organ allows its authority to be exercised by another organ on its behalf.

The government's attributive authority must also consider the principle of sustainable development. The process of sustainable development rests on three main factors: (1) the condition of natural resources, (2) the quality of the environment, and (3) demographic factors. Thus, sustainable development will be meaningless if it is carried out without considering environmentally sound aspects. Development must be able to maintain the integrity of environmental functions and order so that natural resources can continue to be available to support development activities, both now and in the future.

To control and monitor the implementation of development and industrial activities already in progress, ensuring compliance with sustainable development principles, the law requires the preparation of an Environmental Impact Analysis (Amdal). Amdal is a study of the significant impacts of a planned business and/or activity on the environment, necessary for decision-making regarding the implementation of the business/activity. This is needed to maintain the balance of an ecosystem and to undertake management efforts promptly if environmental quality declines due to ecosystem disruption. Therefore, environmental pollution becomes a threat to indigenous peoples, but the presence of the government and the application of sustainable development principles are crucial to addressing environmental issues for indigenous peoples.

CONCLUSION

Based on research on marine environmental pollution impacting the fulfillment of indigenous peoples' rights, especially when the environment, which is their livelihood, is contaminated by palm oil waste controlled by companies exploiting their natural resources, this undoubtedly exacerbates the fulfillment of their rights to survival. Therefore, the role of the community and the government in the preparation of Amdal must be realized by applying sustainable development principles to ensure the fulfillment of community rights to the environment.

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